

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0403

Income Tax

Fiscal Years ending February 29, 1996, February 28, 1997, & February 28, 1998

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

The negligence penalty was assessed on an income tax assessment that resulted from an audit conducted for the fiscal years ending February 29, 1996, February 28, 1997, and February 28, 1998.

The taxpayer is engaged in the business of inspection, maintenance, repair and testing of overhead cranes and runways. The company also provides training for its employees and its customer's employees regarding the operation and maintenance of cranes and runways. The taxpayer has no fixed business locations in Indiana. Nexus in Indiana is created from the performance of services.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer argues the penalty should be waived as the taxpayer acted in a good faith manner. The Department points out the assessment was a result of the taxpayer being unaware of Indiana tax regulations.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was ignorant of Indiana tax regulations. Ignorance of tax regulations is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.